

INFORMATION PAPER

ATJA

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SUBJECT: Use of Appropriated Funds for Promotional Items

1. **Purpose.** To provide general information on the fiscal rules regarding purchasing promotional items.
2. **Discussion.** A recurring issue facing Commands is whether appropriated funds may be used to purchase relatively inexpensive items for distribution to either: (a) agency employees as incentives to boost morale or increase support for a particular program; or (b) non-agency personnel.
3. If the item is not specifically authorized by an appropriations act, the answer depends on whether the expenditure is reasonably related to the purpose Congress intended the appropriation to fulfill. GAO recently articulated the test for determining whether expenses are “necessary or proper or incident” to the object of an appropriation as follows: (1) the expenditure must have a logical relationship to the appropriation sought to be charged; (2) the expenditure must not be prohibited by law; and (3) the expenditure must not be provided for by another appropriation. See B-306424, Presidio Trust--Use of Appropriated Funds for Audio Equipment (March 24, 2006). See 31 U.S.C § 1301(a).
4. The application of the “necessary expense” rule is a matter of agency discretion. However that discretion is not unfettered. For example, the Comptroller General rejected the use of appropriated funds to pay for plastic ice scrapers imprinted with the inscription “U.S. Army Corps of Engineers - Huntsville Division - Please don't drink and drive” for Huntsville employees. The Corps argued the ice scrapers served a valuable promotional purpose in support of a safety program. However, because the Corps did not demonstrate how the ice scrapers addressed an occupational health and safety hazard not shared by the public as a whole, the Comptroller General did not view the expense as necessary.

Similarly, the Comptroller General did not accept an IRS argument that the distribution of T-shirts stamped with the Combined Federal Campaign (CFC) logo to IRS Memphis Service Center employees contributing five or more dollars per pay period to CFC was a necessary expense to motivate its employees to contribute to CFC. GAO found that the T-shirts qualified neither as awards nor as items necessary for IRS' accomplishment of an authorized purpose.

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In another case, Department of Energy (DOE) was not allowed to purchase baseball caps for personnel recruitment purposes since the caps were in the nature of personal gifts. DOE stated that giving away the caps furthered its goal of recruiting a diverse workforce. GAO found that without a more direct link between the caps and the appropriation to be charged, the expenditure was not appropriate.

5. Some expenditures have been approved because they were found necessary to carry out the purposes of the agency's appropriation. For example, the purchase and distribution of pieces of lava rocks to visitors of the Capulin Mountain National Monument was a proper use of the Department of the Interior's appropriated funds. The appropriation in question was for "expenses necessary for the management, operation, and maintenance of areas and facilities administered by the National Park Service." The Comptroller General determined that distribution of the rocks furthered the objectives of the appropriation because it was effective in preserving the Monument by discouraging visitors from removing lava rock elsewhere in the Monument. Thus, the rocks were not considered to be personal gifts.

Similarly, the Comptroller General concluded the Army could use its appropriations to give away framed recruiting posters as "prizes" in drawings at national conventions of student organizations. The students had to fill out cards to enter the drawings, and the cards would provide leads for potential recruits. The Comptroller General found that the Army is authorized to advertise its recruitment program, and posters are a legitimate form of advertising.

In another case, the Comptroller General concluded the United States Mint could give complimentary specimens of commemorative coins and medals to customers whose orders had been mishandled. This was based on the following rationale: since customers who do not receive what they paid for may be disinclined to place further orders, the goodwill gesture of giving complimentary copies to these customers would directly contribute to the success of the Mint's commemorative sales program.

6. Gifts to employees and non-employees. GAO consistently holds that personal items intended as gifts for agency employees may not be purchased with appropriated funds unless essential to achieving an authorized purpose. See B-195247 (August 29, 1979)(APF may not be used to buy paperweights and plaques for distribution to U.S. Army Criminal Investigation Command (USACIDC) personnel in recognition of their support to USACIDC. While these items may be desirable, it has an indirect and conjectural bearing upon the purposes of USACIDC's appropriation).

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Similarly, an agency may not purchase gifts or souvenirs for non-employees unless there is a direct link between the items and the purpose of the appropriation charged. In order to justify purchasing items in the nature of a personal gift, an agency must demonstrate the items directly further its mission. See B-247563.3 (April 5, 1996)(Department of Veterans Affairs' appropriation not available to purchase novelty items to potential employees. These items did not directly contribute to an authorized function and were not justified under the necessary expense rule); *and* B-191155 (March 29, 1978)(GAO considered the Environmental Protection Agency's (EPA) purchase of novelty plastic garbage cans containing candy representing items of solid waste to attract people to its exhibit at an exposition on waste management. GAO found that the purchase was not essential to EPA achieving its authorized mission and was not proper).

7. In determining whether to use appropriated funds to purchase promotional items, consider whether the item is specifically authorized by an appropriations act. If not, ask whether there is a logical relationship between the appropriation and the item that is necessary to carry out an authorized function. Finally, ensure the item is not otherwise prohibited by law.

8. This information paper discusses the fiscal rules regarding the purchase of promotional items. It is simply an overview and designed to provide familiarization with this area. Each purchase/use of promotional items must be analyzed on its own individual facts and circumstances. This information paper should not be construed as authoritative. Questions regarding fiscal matters should be always addressed to the Directorate of Resource Management. Fiscal law issues should be addressed to the Office of the Staff Judge Advocate.